IN THE HIGH COURT OF UTTRANCHAL
AT NAINITAL

Defective A.O. No. 43 of 2006

1. Mahendra Ram S/o Ram Swaroop
2. Smt. Pano W/o Mahendra Ram
3. Vijay S/o Mahendra Ram
   R/o Mohalla Jagatpur Rudrapur
   Tehsil Kichha
   District Udham Singh Nagar … Appellants

Vs

1. Rajendra Kapoor S/o K.C. Kapoor
   M/s Kapoor Transport Company
   Moradabad U.P.
2. Divisional Manager,
   National Insurance Company Ltd.
   Haldwani, District Nainital … Opposite Parties

Sri S.K. Mandal, learned counsel for the appellants
Sri Lalit Belwalm, learned counsel for the opposite party No.2

Hon'ble B.C. Kandpal, J.

This appeal has been preferred under Section 173 of the Motor Vehicle Act for enhancement of the amount of compensation awarded by the claim tribunal vide impugned judgment and award dated 24.10.2005 and 09.11.2005 passed by M.A.C.T./ Additional District Judge/III Fast Track Court, Udham Singh Nagar in M.A.C.T. No. 76 of 2005 Mahendra Ram & others Vs Rajendra Kapoor and another.

2. Brief facts of the case are that on 03.02.2005 at 06:45 a.m Sanjay Kumar deceased was going towards the Police lane on Nainital Road on his cycle. Near the Police Lane one truck bearing registration No. UP21J 9297 which was being driven in a very rash and negligent manner, hit Sanjay Kumar due to which he sustained serious injuries. Immediately after the accident he was admitted to the Dr. Batla Clinik at Rudrapur, due to serious injuries he was referred to Dhanwantri Tomar Hospital, Bareilly. On

05.02.2005 he was declared dead. At the time of accident, the deceased was doing the business of milk and selling newspapers and was earning Rs. 5,000/- per month. The claimant filed a claim petition before the Tribunal concerned for Rs. 6,25,000/- as compensation.

3. The opposite party – Oriental Insurance Company Ltd. filed its written statements alleging therein that the claimants have not filed the relevant documents. The owner of the offending vehicle has not followed the rule of Insurance Policy. It has further pleaded by the Insurance Company, that the claim petition is not maintainable and liable to be dismissed.

4. The Tribunal on appreciation of evidence on record awarded Rs. 1,52,000/- along with interest @ 7% per annum in favour of the claimants.

5. Being dissatisfied with the amount of compensation, the claimants have filed this appeal for enhancement of compensation.

6. Heard Sri S.K. Mandal, learned counsel for the appellants, Sri Lalit Belwalm, learned counsel for the opposite party No. 2 and perused the record.

7. Learned counsel for the appellant/claimant has argued that the impugned judgment and award in relation to the compensation is against the weight of the evidence on record as the Tribunal has wrongly calculated the amount of compensation without looking into the material available on the record.

8. I do not find any force in the argument advanced by the learned counsel for the appellant. The Tribunal has made the right calculation while awarding the compensation. I also come to the conclusion that the impugned judgment and award passed by the Tribunal does not require any interference. I find myself in total agreement with the finding recorded by the Tribunal.

9. The appeal lacks merit and is liable to be dismissed.

10. Accordingly, the appeal is dismissed.

11. The impugned judgment and award dated dated 24.10.2005 and 09.11.2005 passed by M.A.C.T./Additional District Judge/III Fast Track Court, Udham Singh Nagar in M.A.C.T. No. 76 of 2005 Mahendra Ram & others Vs Rajendra Kapoor and another is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.)

18.10.2006
ASWAL